

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/698,659 Confirmation No. 4437
Applicant : James A. Leistra
Filed : 10/31/2003
TC/A.U. : 1762
Examiner : Elena Tsoy
Docket No.: 03-292
Cust. No. : 34704

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

REASONS FOR PRE-APPEAL BRIEF CONFERENCE REQUEST

Dear Sir:

This paper is submitted accompanying a Notice of Appeal and a Request for Pre-Appeal Brief Conference.

The Final Office Action of June 21, 2007, from which appeal has been taken, rejects these independent claims (1) as obvious over Wessel et al., (2) as obvious over Asukabe et al. in view of Wessel et al., and (3) as obvious over Menjak et al. Each of these rejections totally ignores a critical limitation in the claims and is therefore flawed. The application should either be allowed or remanded for further non-final examination.

Each of claims 1 and 25 clearly calls for an electrodes, a membrane between the electrodes, and a layer between the membrane and at least one of the electrodes. The claim calls for the layer to be a peroxide decomposition layer, specifically calls for the positive method step of depositing that layer, and calls for that layer to have different properties from the electrode in terms of porosity.

In rejecting claims 1 and 25, the Examiner relies upon Wessel et al. The Examiner recites teaching from Wessel et al. that all fuel cells have a gas-permeable, porous, so-called three-dimensional electrode whereas the membrane (electrolyte) present in all fuel cells forms a gas-tight barrier between the two electrodes. The Examiner then makes a leap to state that "since a layer comprising a catalyst is located between electrode and membrane, it should have porosity of either electrode or porosity of a gas-tight (claimed

porosity of less than 20%) membrane". This is flawed in a number of ways. First, the layer referred to is part of the electrode, not a layer between the electrode and the membrane. The layer referred to be the Examiner is part of the "gas-permeable, porous, so-called three dimensional electrode" referred to be the Examiner. It has the porosity of the electrode, which is different from the limitations in claims 1 and 25 in two important respects, one which calls for the layer to have a different porosity from the electrode and the other calling for the layer to have a porosity of less than 20%.

The layer called for by claims 1 and 25 is simply put totally absent from Wessel et al. This rejection completely ignores the layer called for in claims 1 and 25, and it therefore clearly in error.

The rejections based upon Asukabe et al. and Menjak et al. each in view of Wessel et al., recite the same reasoning concerning the teachings of Wessel et al., and therefore these rejections are similarly flawed and improper.

Based upon the foregoing, and keeping in mind that the present application is drawn to method claims corresponding to apparatus claims of similar scope which have already been allowed and granted in commonly owned US Patent 7,112,386, it is submitted that the claims of the present application are clearly allowable over the art of record. Allowance or remand is appropriate and earnestly solicited.

This paper is accompanied by a Notice of Appeal and Request for Pre-Appeal Brief Conference, along with authorization of the fee for appeal and an extension of time. It is believed that no other fee

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is due. If any additional fee is due, please charge same to deposit
account 02-0184.

Respectfully submitted,

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 03-292	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		Application Number 10/698,659	Filed 10/31/2003
		First Named Inventor Leistra, et al.	
		Art Unit 1762	Examiner Tsoy, Elena
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. 34,309 Registration number _____ </div> <div style="width: 45%; text-align: center;"> _____ /george a. coury Signature George A. Coury _____ Typed or printed name 203-777-6628 _____ Telephone number December 21, 2007 _____ Date </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ </div> <div style="width: 45%;"></div> </div>			

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